



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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Members of the Board of Zoning Appeals
800 2nd Avenue South, P O Box 196300
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RE: BZA Case 2006-53

Members of the Board:

Before you is an appeal from my decision regarding the features of the abutting structures used to determine the average street setback for a two family structure being constructed at 1622 S Observatory Drive. Prior to constructing any new structure or a change in footprint to the front of an existing home in an established neighborhood we must determine the average setback. Our normal process is to require that a Property Standards Inspector visit the property to determine this, such was the case here.

The applicant has argued that the front wall (façade) of their residence was the proper feature to establish the setback of their residence. They have quoted two definitions in the code that define a "Front Façade" and the "Leading edge" of a building. First these are not the only features of a structure that are subject to a street setback as defined in the definition of "Setback". All of these definitions are found in Section 17.04.060 of the Zoning Code (ZC). In this section it says that all features of a home are subject to a setback except those, which are, defined as permitted obstructions as listed in Section 17.12.040.

I think it is important that the board have some historical perspective regarding how and where the definition of Façade and Leading Edge were placed in the bulk provisions of the ZC. It was after the adoption of the Urban Zoning Overlay (UZO) Bill 2000-364 that the words Front façade and Leading edge were placed in the ZC. In 2002 bills 2002-1009-1012 and 1014 were placed in the ordinance defining their use and meaning. Their primary reason for being placed in the ZC was for the purpose of defining Contextual Setbacks in the UZO. Bill 2002-1012 amended section 17.12.030.C for the purposes of requiring that a front façade be oriented to the narrowest street frontage on a corner lot. This new definition aids us in determining the features of a front façade but it is not what drives the street setbacks. These amendments were primarily prompted by the need to more clearly define what part of and what structures were to be used to set the contextual setback line in the UZO based on the features of the structures on other properties. Some board members may remember a request for a variance in North Nashville where a

service station canopy was driving the contextual setback and it was determined that that was not what the Planning Department had intended. Since there was no definition of façade we used what was subject to setback at that time. Even though the canopy was subject to street setbacks it was not to be used for the purposes of establishing a building wall for the purposes of determining contextual setbacks, which I think bill 2002-1009 bears out. The only place that the words leading edge is found in the bulk provisions are in the contextual street setback provisions. The only place front façade is used in the bulk regulations are in the circumstance of establishing orientation on a corner lot and in the contextual setback provisions. So in my opinion we are comparing Apples to Oranges in trying to use these definitions for defining street block averaging.

The definition of Setback is, as it exists today in the Zoning Code since it's adoption in 1998 is found in Section 17.04.060. "Setback" means that part of a lot extending open and unobstructed from the lowest level to the highest level to the sky, except for permitted obstructions, along the length of a lot line for a depth or width set forth in the bulk regulations for the district in which it is located. Required setbacks are also referred to as yards. See diagram 17.040F. Very simply if an obstruction is not listed in 17.12.040 it is subject to setbacks.

In this particular case the applicant's street setback was driven by an elevated front porch some 12 feet in width and 8 feet in depth that we felt was subject to a setback as a porch. In our opinion the grade around the house was elevated some 3 steps for this purpose. Had the landing not been more than that the area necessary to safely enter the house or had the grade not been elevated some three steps we would have ruled this to be a stoop or terrace but that is not the case. We feel that the lack of a roof is not an argument. The ZC allows decks to encroach in a rear setback 10 feet in item 27 if it has no cover. After this question arose Rick Shepherd and I visited the properties. Both of our reactions and determinations were the same this was a porch and should be measured from the leading edge of such which it had been. To show you how complex this is the house on the opposite side of the two family dwelling under construction has what would normally be considered a stoop as defined by item 17.12.040 item 16 and not subject to the street setback, except that it has a roof over it and has supports that are attached improperly in accordance with item b.3 which makes it subject to setbacks.

As we have told the applicants we can understand that they have concerns about a house being placed beside theirs of this size. However we feel it meets the setback and the size in our opinion is a legislative issue.

Sincerely,



Lon F. West
Metropolitan Zoning Administrator

LFW:ljb